

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

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UNITED STATES OF AMERICA,

Plaintiff,

v.

DOVER CHEMICAL CORPORATION,

Defendant.

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Civil Action No. 5:11-cv-02754

**CONSENT DECREE**

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**CONSENT DECREE**

WHEREAS, Plaintiff the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint against Defendant Dover Chemical Corporation (“Dover”) concurrently with the lodging of this Consent Decree;

WHEREAS Dover owns and operates a chemical manufacturing site (the “Facility”) located at 3676 Davis Road NW, Dover, Ohio;

WHEREAS in its complaint, the United States alleges that Dover has violated and/or continues to violate the following statutory and regulatory provisions:

- (1) Section 111 of the Clean Air Act (“CAA”), 42 U.S.C. § 7411, and its implementing regulations at 40 C.F.R. Part 60, Subpart VV (the Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006) (“NSPS Subpart VV”);
- (2) Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations at 40 C.F.R. Part 63, Subparts F, G, and H (the National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (the “HON”)) and 40 C.F.R. Part 63, Subpart FFFF (the National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing (the “MON”));
- (3) Section 502 of the CAA, 42 U.S.C. § 7661a, and its implementing regulations at 40 C.F.R. Part 70; and
- (4) Section 608 of the CAA, 42 U.S.C. § 7671g, and its implementing regulations at 40 C.F.R. Part 82, Subpart F (Recycling and Emissions Reduction);

WHEREAS Dover denies that it has violated the foregoing statutory and regulatory provisions, denies that it has ever been a “major source” as that term is used under Section 112 of the CAA, and maintains that it has been and remains in compliance with all applicable statutes, regulations and permits;

WHEREAS, on May 6, 2011, without any admission of liability as a major source, Dover retained a third-party consultant to review all process units and production areas at the Facility to identify all requirements of the HON and MON that would apply if the Facility were a major source;

WHEREAS, on October 4, 2011, without any admission of liability as a major source, Dover submitted a report that described the results of the third-party, Facility-wide HON/MON compliance status and applicability review and complied with the Initial Notification requirements of the HON and MON, 40 C.F.R. §§ 63.151(b), 63.2515(a) and (b), respectively;

WHEREAS, in entering into this Consent Decree, Dover consents to the Facility becoming a major source under Section 112 of the CAA, 42 U.S.C. § 7412, as of December 31, 2011;

WHEREAS the Facility houses one process unit, the Nonylphenol Unit, which is subject to the monitoring method found at 40 C.F.R. Part 60, Appendix A, Method 21, and this unit has approximately 500 pieces of “equipment” as that term is defined at 40 C.F.R. § 60.481;

WHEREAS, during negotiations, Dover retrofitted its Frick Refrigeration Unit to enable that Unit to use non-ozone depleting refrigerant and Dover submitted a report documenting the retrofit;

WHEREAS, because of the retrofit described above, the Frick Refrigeration Unit no longer is subject to Section 608 of the CAA, 42 U.S.C. § 7671g, and its implementing regulations at 40 C.F.R. Part 82, Subpart F (Recycling and Emissions Reduction);

WHEREAS, the United States and Dover (“Parties”) recognize, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in

good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355 and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because Dover resides and is located in this judicial district and the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Dover consents to this Court's jurisdiction over this Decree, over any action to enforce this Decree, and over Dover. Dover also consents to venue in this judicial district.

2. For purposes of this Consent Decree, Dover does not contest that the Complaint states claims upon which relief may be granted pursuant to Section 112 of the CAA, 42 U.S.C. § 7412.

3. Notice of the commencement of this action has been given to the State of Ohio as required by Section 113(b) of the CAA.

### **II. APPLICABILITY**

4. The obligations of this Consent Decree apply to and are binding upon the United States and upon Dover and any successors, assigns, and other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of all or part of the Facility, whether in compliance with the procedures of Paragraphs 5 or 6 or otherwise, shall relieve Dover of its obligations to ensure that the terms of this Consent Decree are implemented unless and until:

a. The transferee agrees in writing to undertake the applicable obligations required by this Consent Decree with respect to the Facility, and to intervene as a defendant in this action for the purpose of being bound by the applicable terms of this Consent Decree; and

b. The United States, after receiving information sufficient to demonstrate that the transferee has the technical and financial means to comply with the applicable obligations of this Consent Decree, consents in writing to substitute the transferee for Dover with respect to such obligations; and

c. The Court approves such substitution.

6. By no less than 30 days prior to the transfer of the ownership or operation of all or part of the Facility, Dover shall provide a copy of this Consent Decree to the proposed transferee and also shall provide written notice of the prospective transfer, together with a copy of the proposed written agreement between Dover and the prospective transferee, to EPA, the United States Attorney for the Eastern District of Michigan, and the United States Department of Justice, in accordance with Section XIII of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

7. Dover shall provide a copy of all relevant portions of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. The foregoing requirement may be satisfied by hard copy, electronic copy,

or by providing on-line access with notice to the affected personnel. Dover shall condition any such contract upon performance of the work in conformity with the applicable terms of this Consent Decree.

8. In any action to enforce this Consent Decree, Dover shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### **III. DEFINITIONS**

9. Terms used in this Consent Decree that are defined in the CAA and in federal and state regulations promulgated pursuant to the CAA shall have the meaning assigned to them in the CAA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. “CAP” shall mean the Corrective Action Plan described in Paragraph 25 of this Consent Decree.

b. “Complaint” shall mean the Complaint filed by the United States in this action.

c. “Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto, but in the event of any conflict between the text of this Consent Decree and any Appendix, the text of this Consent Decree shall control.

d. “Covered Equipment” shall mean all Covered Types of Equipment in the Covered Process Unit.

e. “Covered Process Unit” shall mean the Nonylphenol Unit.

f. “Covered Types of Equipment” shall mean all valves (except pressure relief valves), connectors, pumps, agitators, and OELs in light liquid or gas/vapor service that are



regulated under any “equipment leak” provisions of 40 CFR Part 61 or 63 or a state or local LDAR program.

g. “Date of Lodging of this Consent Decree” or “Date of Lodging” shall mean the date that the United States files a “Notice of Lodging” of this Consent Decree with the Clerk of this Court for the purpose of providing notice and the opportunity for comment to the public.

h. “Day,” for purposes of requirements uniquely imposed by Subsection V.C and not by any applicable LDAR provisions, shall mean a calendar day. In computing any period of time under this Consent Decree for submittal of reports, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall include the next day that is not a Saturday, Sunday, or federal or state holiday. For all other purposes, “day” shall have the meaning provided in the applicable LDAR provisions.

i. “Dover” shall mean Dover Chemical Corporation.

j. “Effective Date” shall have the meaning given in Section XIV (Effective Date).

k. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

l. “Facility” shall mean the chemical manufacturing plant owned and operated by Dover and located at 3676 Davis Road NW, Dover, Ohio.

m. “HON” shall mean the National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry found at 40 C.F.R. Part 63, Subparts F, G, and H.

n. “LDAR” or “Leak Detection and Repair” shall mean the leak detection and repair activities required by any “equipment leak” provisions of 40 CFR Part 61 or 63. LDAR also shall mean any state or local equipment leak provisions that: (i) require the use of Method 21 to monitor for equipment leaks and also require the repair of leaks discovered through such monitoring; and (ii) are intended to minimize emissions of hazardous air pollutants or other substances identified on the basis of toxicity (*e.g.*, toxic air contaminants).

o. “LDAR Audit Commencement Date” or “Commencement of an LDAR Audit” shall mean the first day of the on-site inspection that accompanies an LDAR audit.

p. “LDAR Audit Completion Date” or “Completion of an LDAR Audit” shall mean the date that is 120 days after the LDAR Audit Commencement Date.

q. “LDAR Personnel” shall mean all Dover contractors and employees who perform LDAR monitoring, LDAR data input, maintenance of LDAR monitoring devices, leak repairs on equipment subject to LDAR, and/or any other field duties generated by LDAR requirements.

r. “MON” shall mean the National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing found at 40 C.F.R. Part 63, Subpart FFFF.

s. “Nonylphenol Unit” shall mean the process unit at the Facility that produces nonylphenol and is identified as Ohio EPA Emissions Unit P011.

t. “OEL” or “Open-Ended Line” shall mean any valve, except pressure relief valves, having one side of the valve seat in contact with process fluid and one side open to atmosphere, either directly or through open piping.

u. “OELCD” shall mean an open-ended valve or line at the closure device.

v. “Ohio EPA” shall mean the Ohio Environmental Protection Agency and any of its successor departments or agencies.

w. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.

x. “Parties” shall mean the United States and Dover.

y. “Quarter” or “quarterly” shall mean a calendar quarter (January through March, April through June, July through September, October through December) except as otherwise provided in applicable LDAR provisions.

z. “Section” shall mean a portion of this Consent Decree that has a heading identified by an upper case Roman numeral.

aa. “Subparagraph” shall mean a portion of a Paragraph of this Consent Decree that is identified by a sequential lower-case letter or by a lower-case Roman numeral.

bb. “Subsection” shall mean a portion of a Section of this Consent Decree that has a heading identified by a capital letter.

cc. “United States” shall mean the United States of America, acting on behalf of EPA.

#### **IV. CIVIL PENALTY**

10. By no later than 30 days after the Effective Date of this Consent Decree, Dover shall pay the sum of Six Hundred, Twenty Thousand Dollars (\$620,000) as a civil penalty. Dover shall pay the civil penalty by FedWire Electronic Funds Transfer (“EFT”) to the United States Department of Justice in accordance with written instructions to be provided to Dover, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Northern District of Ohio, Carl B. Stokes United States Court House, 801 West

Superior Ave., Suite 400, Cleveland, OH 44113-1852. At the time of payment, Dover shall send a copy of the EFT authorization form, the EFT transaction record, and a transmittal letter: (i) to the United States in the manner set forth in Section XIV of this Decree (Notices); (ii) by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and (iii) by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

The transmittal letter shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Dover Chemical Corporation, and shall reference the civil action number, USAO File Number 2008V00777, and DOJ case number 90-5-2-1-09309.

11. If any portion of the civil penalty due to the United States is not paid when due, Dover shall pay interest on the amount past due, accruing from the Effective Date through the date of payment, at the rate specified in 28 U.S.C. § 1961. Interest payment under this Paragraph shall be in addition to any stipulated penalty due.

12. Dover shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

## **V. COMPLIANCE MEASURES**

### **A. Compliance with 40 C.F.R. Part 60, Subpart VV**

13. Compliance with 40 C.F.R. Part 60, Subpart VV. As of the Date of Lodging, the Nonylphenol Unit at the Facility was and remains subject to 40 C.F.R. Part 60, Subpart VV, as an affected facility. As of the Date of Lodging, Dover will continue to comply with NSPS Subparts VV and A (General Provisions) at the Nonylphenol Unit, including all monitoring, recordkeeping, reporting and operating requirements.

**B. Compliance with 40 C.F.R. Part 63, Subparts A, F, G, H, and FFFF (the HON and MON)**

14. Compliance with the HON. By no later than December 31, 2011, the Nonylphenol Unit will be subject to 40 C.F.R. Part 63, Subparts F, G, and H (the HON) and Subpart A (General Provisions) and will comply with all applicable requirements of the HON and Subpart A, including all monitoring, recordkeeping, reporting, and operating requirements.

15. Compliance with the MON. By no later than December 31, 2011, the Para-Cunylphenol/Di-Cunylphenol (“PCP/DCP”) process unit, the Solvent 9228 process unit, and the Phosphites process unit (Ohio EPA Emissions Unit P006) will be subject to 40 C.F.R. Part 63, Subpart FFFF (the MON) and Subpart A (General Provisions) and will comply with all applicable requirements of the MON and Subpart A, including all monitoring, recordkeeping, reporting, and operating requirements.

16. Submission of Notification of Compliance Status Report. By no later than May 31, 2012, Dover shall submit to EPA and Ohio EPA a Notification of Compliance Status Report that complies with 40 C.F.R. §§ 63.152(a)(1), (b) (for the HON unit) and 40 C.F.R. §§ 2520(a) and (d) (for the MON units).

**C. Enhancements to Regulatory LDAR Requirements**

17. Facility-Wide LDAR Document. By no later than 120 days after the Effective Date of this Consent Decree, Dover shall develop a facility-wide document that describes: (i) the facility-wide LDAR program (e.g., applicability of regulations to process units and/or specific equipment; leak definitions; monitoring frequencies); (ii) a tracking program (e.g., Management of Change) that ensures that new pieces of equipment added to the Facility for any reason are integrated into the LDAR program and that pieces of equipment that are taken out of service are removed from the LDAR program; (iii) the roles and responsibilities of all employee and

contractor personnel assigned to LDAR functions at the Facility; (iv) how the number of personnel dedicated to LDAR functions is sufficient to satisfy the requirements of the LDAR program; and (v) how the Facility plans to implement Subsection V.C (*i.e.*, Paragraphs 17 – 26). Dover shall review this document on an annual basis and update it as needed by no later than December 31 of each year.

18. Daily Certification by Monitoring Technicians. Commencing by no later than 120 days after the Effective Date of this Consent Decree, on each day that monitoring occurs, at the end of such monitoring, Dover shall ensure that each monitoring technician certifies that the data collected accurately represents the monitoring performed for that day by requiring the monitoring technician to sign a form that includes the following certification:

On [insert date], I reviewed the monitoring data that I collected today and to the best of my knowledge and belief, the data accurately represent the monitoring that I performed today.

19. Compliance with LDAR Requirements: Quarterly Quality Assurance/Quality Control (“QA/QC”). Commencing by no later than the first full calendar quarter after the Effective Date of this Consent Decree, at times that are not announced to the LDAR monitoring technicians, an LDAR trained employee or contractor of Dover, who does not serve on a routine basis as an LDAR monitoring technician at the Facility, shall undertake the following no less than once per calendar quarter:

- a. Verify that equipment was monitored at the appropriate frequency;
- b. Verify that proper documentation and sign offs have been recorded for all equipment placed on the Delay of Repair (“DOR”) list;
- c. Ensure that repairs have been performed in the required periods;
- d. Review monitoring data and equipment counts for feasibility (e.g., number of pieces of equipment monitored per day) and unusual trends;

- e. Verify that proper calibration records and monitoring instrument maintenance information are maintained;
- f. Verify that other LDAR program records are maintained as required; and
- g. Observe in the field each LDAR monitoring technician who is conducting leak detection monitoring to ensure that monitoring is being conducted as required.

Dover promptly shall correct any deficiencies detected or observed. Dover shall maintain a log that: (i) records the date and time that the reviews, verifications, and observations required by this Paragraph are undertaken; and (ii) describes the nature and timing of any corrective actions taken.

20. LDAR Audits: Schedule. Until termination of this Decree, Dover shall ensure that an LDAR audit of the Covered Process Unit at the Facility is conducted annually in accordance with the following schedule: for the first LDAR audit, the LDAR Audit Commencement Date shall be no later than September 30, 2012; for each subsequent LDAR audit, the LDAR Audit Completion Date shall occur within the same calendar quarter that the first LDAR Audit Completion Date occurred.

21. LDAR Audits: Requirements Related to Persons Conducting LDAR Audits. Dover shall retain and utilize a third party with experience in conducting LDAR audits. Dover shall select a different company than the Facility's regular LDAR contractor to perform the third-party audit and Dover may not hire that company as the Facility's regular LDAR contractor during the life of this Consent Decree.

22. LDAR Audit: Substantive Requirements. For the Covered Process Unit, each LDAR audit shall include: (i) reviewing compliance with all applicable LDAR regulations, including LDAR requirements related to valves, connectors, pumps, agitators and OELs in heavy liquid service; (ii) reviewing and/or verifying, as applicable, the same items that are required to

be reviewed and/or verified in Subparagraphs 19.a – 19.f; (iii) reviewing whether any pieces of equipment that are required to be in the LDAR program are not included; and (iv) “comparative monitoring” as described in Paragraph 23. LDAR audits after the first audit also shall include reviewing the Facility’s compliance with Subsection V.C (*i.e.* Paragraphs 17 - 26).

23. Comparative Monitoring. Comparative monitoring during LDAR audits shall be undertaken as follows:

- a. Calculating a Comparative Monitoring Audit Leak Percentage. Covered Equipment shall be monitored in order to calculate a leak percentage for the Covered Process Unit, broken down by equipment type (*i.e.*, valves, pumps, agitators, connectors, and OELCDs). For descriptive purposes under this Section, the monitoring that takes place during the audit shall be called “comparative monitoring” and the leak percentages derived from the comparative monitoring shall be called the “Comparative Monitoring Audit Leak Percentages.” Dover shall undertake comparative monitoring at the Covered Process Unit in each audit. In undertaking comparative monitoring, Dover shall not be required to monitor every component in the Covered Process Unit but shall comply with generally-accepted LDAR audit practices in determining the number of components to monitor.
- b. Calculating the Historic, Average Leak Percentage from Prior Periodic Monitoring Events. For the Covered Process Unit, the historic, average leak percentage from prior periodic monitoring events, broken down by equipment type (*i.e.*, valves (excluding pressure relief valves), pumps, agitators, connectors, and except as provided in Subparagraph 23.d below, OELCDs) shall be calculated. The following number of complete monitoring periods immediately preceding the comparative monitoring shall be used for this purpose: valves - 4 periods; pumps and agitators – 12 periods; connectors – 2 periods; and except as provided in Subparagraph 23.d below, OELCDs - 4 periods.
- c. Calculating the Comparative Monitoring Leak Ratio. For the Covered Process Unit, the ratio of the Comparative Monitoring Audit Leak Percentage from Subparagraph 23.a to the historic, average leak percentage from Subparagraph 23.b shall be calculated. This ratio shall be called the “Comparative Monitoring Leak Ratio.” If the denominator in this calculation is “zero,” it shall be assumed (for purposes of this calculation but not for any other purpose under this Consent Decree or under any applicable laws and regulations) that one leaking piece of equipment was found in the process unit through routine monitoring during the 12-month period before the comparative monitoring.



- d. In only the first LDAR audit, Dover shall not be required to undertake comparative monitoring on OELCDs or calculate a Comparative Monitoring Leak Ratio for OELCDs because of the unavailability of historic, average leak percentages for OELCDs.

24. When More Frequent Periodic Monitoring is Required. If a Comparative Monitoring Audit Leak Percentage calculated pursuant to Subparagraph 23.a triggers a more frequent monitoring schedule under any applicable federal, state, or local law or regulation, Dover shall monitor the affected type of equipment at the greater frequency unless and until less frequent monitoring is again allowed under the specific federal, state, or local law or regulation.

25. Corrective Action Plan ("CAP").

- a. Requirements of a CAP. By no later than the date that is 30 days after each LDAR Audit Completion Date, Dover shall develop a preliminary Corrective Action Plan if: (i) the results of an LDAR audit identify any areas of concern; or (ii) a Comparative Monitoring Leak Ratio calculated pursuant to Subparagraph 23.c is 3.0 or higher and the Comparative Monitoring Audit Leak Percentage calculated pursuant to Subparagraph 23.a is greater than or equal to 0.5 percent. The preliminary CAP shall describe the actions that Dover has taken or shall take to address: (i) the areas of concern and/or (ii) the causes of a Comparative Monitoring Leak Ratio that is 3.0 or higher (but only if the Comparative Monitoring Audit Leak Percentage is at or above 0.5 percent). Dover shall include a schedule by which actions that have not yet been completed shall be completed. Dover promptly shall complete each corrective action item with the goal of completing each action within the date that is 90 days after the LDAR Audit Completion Date. If any action is not completed or not expected to be completed within 90 days after the LDAR Audit Completion Date, Dover shall explain the reasons and propose a schedule for prompt completion in the final CAP to be submitted under Subparagraph 25.b.
- b. Submission of the Final CAP to EPA. By no later than the date that is 120 days after the LDAR Audit Completion Date, Dover shall submit the final CAP to EPA, together with a certification of the completion of each item of corrective action. If any action is not completed within 90 days after the LDAR Audit Completion Date, Dover shall explain the reasons, together with a proposed schedule for prompt completion. Dover shall submit a supplemental certification of completion by no later than 30 days after completing all actions.

- c. EPA Comment on CAP. EPA may submit comments on the CAP. Except for good cause, EPA may not request Dover to modify any action within the CAP that already has been completed or is in progress at the time of EPA's comments. Within the date that is 30 days after receipt of any comments from EPA, Dover shall submit a reply. Disputes arising with respect to any aspect of a CAP shall be resolved in accordance with the dispute resolution provisions of this Decree.

26. Certification of Compliance. Within 180 days after the initial LDAR Audit Completion Date, Dover shall certify to EPA that, to the signer's best knowledge and belief formed after reasonable inquiry: (i) except as otherwise identified, the Facility is in compliance with all applicable LDAR regulations and this Subsection V.C (Paragraphs 17 - 26); (ii) Dover has completed all corrective actions, if applicable, or is in the process of completing all corrective actions pursuant to a CAP; and (iii) all equipment at the Facility that is regulated under LDAR has been identified and included in the Facility's LDAR program. To the extent that Dover cannot make the certification in all respects, it shall specifically identify any deviations from Items (i) - (iii).

**D. Permitting**

27. Title V Permit Application. By no later than December 31, 2011, Dover shall submit to Ohio EPA an application for a permit under Title V of the CAA, 42 U.S.C. §§ 7661 - 7661f, ("Title V Permit") for the Facility that Dover, in good faith, believes is complete. Dover shall comply with all federal and state requirements in completing its permit application. In addition to identifying any other applicable requirements, Dover shall:

- a. Accept "major source" status under Section 112 of the CAA, 42 U.S.C. § 7412;
- b. Identify the HON and MON as applicable requirements, including identifying all details of HON/MON applicability necessary to make the application complete; and

- c. Include a Facility-wide analysis of the Facility's potential-to-emit all pollutants.

28. Dover Cooperation After Submission of Permit Application. Following the submission of its Title V Permit application, Dover shall cooperate with Ohio EPA in order to assist Ohio EPA in rendering a determination that the application is complete. Such cooperation includes but is not limited to, submitting, as expeditiously as practicable, all follow-up information that Ohio EPA seeks. After Ohio EPA deems the application "complete," Dover shall continue to cooperate with Ohio EPA until a final Title V Permit for the Facility is issued. To the extent that Dover is responsible for more than 90 days of delays in the period between December 31, 2011, and the date of the issuance of a final Title V Permit for the Facility, Dover shall be liable for stipulated penalties under Paragraph 38.o of Section VII (Stipulated Penalties). For purposes of the preceding sentence, reasonable time periods needed to respond to requests from Ohio EPA, schedule meetings, and otherwise undertake tasks necessary to assist Ohio EPA in issuing a final Title V Permit do not count towards the number of days of "delays." Disputes arising under this Paragraph or Paragraph 38.o shall be resolved in accordance with the dispute resolution provisions (Section IX) of this Decree.

29. Notification to EPA of Status of Title V Permit Issuance Process. Commencing on February 29, 2012, and continuing on the last day of each month (or if that day falls on a Saturday, Sunday, or holiday, the first business day thereafter) until a final Title V Permit has been publicly issued for the Facility, Dover shall send an electronic message to the following email addresses: [schnieders.kathleen@epa.gov](mailto:schnieders.kathleen@epa.gov); [loukeris.constantinos@epa.gov](mailto:loukeris.constantinos@epa.gov); [patel.shilpa@epa.gov](mailto:patel.shilpa@epa.gov). In that message, Dover shall provide an update on the status of the Title V Permit issuance process for the prior month, including but not limited to identifying and providing a description of: (i) all significant discussions that were held; (ii) all areas of

disagreement or uncertainties between Dover and Ohio EPA; and (iii) all other information that Dover considers relevant to the timing of the issuance of the final Title V Permit. Dover shall not object to EPA, in its discretion, participating in discussions with Dover and Ohio EPA regarding Title V Permit issuance.

30. Compliance with Title V Permit upon Issuance. Dover shall comply with its Title V Permit upon issuance in final form.

## **VI. REPORTING REQUIREMENTS**

31. Semi-Annual Compliance Status Reports. On the dates and for the time periods set forth in Paragraph 32, Dover shall submit to EPA, in the manner set forth in Section XIII (Notices), the following information:

- a. An identification and description of any non-compliance with the requirements of Section V (Compliance Requirements);
- b. An identification of any problems encountered in complying with the requirements of Section V (Compliance Requirements);
- c. The number of LDAR Personnel at the Facility and the approximate percentage of time each such person dedicated to performing his/her LDAR functions;
- d. Any deviations identified in the QA/QC performed under Paragraph 19, as well as any corrective actions taken under that Subsection;
- e. A summary of LDAR audit results including specifically identifying all alleged deficiencies;
- f. The status of all actions under any CAP that was submitted during the reporting period, unless the CAP was submitted less than one month before the compliance status report; and
- g. For reports due prior to issuance of the Facility's Title V Permit in final form, a narrative description of the three items listed in Paragraph 29.

32. Due Dates. The first compliance status report shall be due thirty one days after the first full half year after the Effective Date of this Consent Decree (i.e., either: (i) January 31

of the year after the Effective Date, if the Effective Date is between January 1 and June 30 of the preceding year; or (ii) July 31 of the year after the Effective Date, if the Effective Date is between July 1 and December 31). The initial report shall cover the period between the Effective Date and the first full half year after the Effective Date (a “half year” runs between January 1 and June 30 and between July 1 and December 31). Until termination of this Decree, each subsequent report will be due semi-annually and shall cover the prior half year (i.e., either January 1 to December 31 or July 1 to June 30).

33. Each report submitted under this Consent Decree shall be signed by the Facility manager or the head of environmental management and compliance at the Facility and shall include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

34. All Reports under this Consent Decree shall be submitted to EPA in the manner designated in Section XIV of this Consent Decree (Notices).

35. The reporting requirements of this Consent Decree do not relieve Dover of any reporting obligations required by the CAA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

36. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

## **VII. STIPULATED PENALTIES**

37. Failure to Pay Civil Penalty. If Dover fails to pay any portion of the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Dover shall pay a stipulated penalty of \$1000 per day for each day that the payment is late.

38. Failure to Meet Other Consent Decree Obligations. Dover shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified in Table 2 below unless excused under Section VIII (Force Majeure).

Table 1

Violation	Stipulated Penalty
38.a. Each failure to comply with any applicable standard in 40 C.F.R. 60.482-1 through 60.485 at the Nonylphenol Unit, in violation of Paragraph 13, except for any failure identified in the first LDAR audit report prepared in compliance with Paragraphs 20-23, so long as any such failure is corrected pursuant to Paragraph 25	\$ 100 per violation per day
38.b. Each failure to comply any applicable emission limit in the HON at the Nonylphenol Unit, or in the MON at the PCP/DCP process unit, the Solvent 9228 process unit, or the Phosphites process unit (Ohio EPA Emissions Unit P006), in violation of Paragraphs 14 and 15, respectively	\$ 500 per violation per day
38.c. Each failure to comply with any applicable work practice standard in the HON at the Nonylphenol Unit, or in the MON at the PCP/DCP process unit, the Solvent 9228 process unit, or the Phosphites process unit (Ohio EPA Emissions Unit P006), in violation of Paragraphs 14 and 15, respectively	\$ 100 per violation per day

38.d. Failure to timely develop a Facility-Wide LDAR Document as required by Paragraph 17 or failure to timely update the Document on an annual basis if needed pursuant to Paragraph 17	<table> <tr> <th><u>Period of non-compliance</u></th><th><u>Penalty per day</u></th></tr> <tr> <td>1 - 15 days</td><td>\$ 150</td></tr> <tr> <td>16 - 30 days</td><td>\$ 200</td></tr> <tr> <td>31 days or more</td><td>\$ 250</td></tr> </table>	<u>Period of non-compliance</u>	<u>Penalty per day</u>	1 - 15 days	\$ 150	16 - 30 days	\$ 200	31 days or more	\$ 250		
<u>Period of non-compliance</u>	<u>Penalty per day</u>										
1 - 15 days	\$ 150										
16 - 30 days	\$ 200										
31 days or more	\$ 250										
38.e. Each failure of a monitoring technician to complete the certification required in Paragraph 18	\$ 50 per failure per technician										
38.f. Each failure to perform any of the requirements relating to QA/QC in Paragraph 19	\$ 500 per missed requirement per quarter										
38.g. Failure to conduct an LDAR audit in accordance with the schedule set forth in Paragraph 20	<table> <tr> <th><u>Period of non-compliance</u></th><th><u>Penalty per day</u></th></tr> <tr> <td>1 – 15 days</td><td>\$ 150</td></tr> <tr> <td>16 – 30 days</td><td>\$ 200</td></tr> <tr> <td>31 days or more</td><td>\$ 250, not to exceed \$20,000 per audit</td></tr> </table>	<u>Period of non-compliance</u>	<u>Penalty per day</u>	1 – 15 days	\$ 150	16 – 30 days	\$ 200	31 days or more	\$ 250, not to exceed \$20,000 per audit		
<u>Period of non-compliance</u>	<u>Penalty per day</u>										
1 – 15 days	\$ 150										
16 – 30 days	\$ 200										
31 days or more	\$ 250, not to exceed \$20,000 per audit										
38.h. Use of a third party auditor that is not experienced in LDAR audits or use of Dover's regular LDAR contractor to conduct the third party audit, in violation of Paragraph 21	\$ 10,000 per audit										
38.i. Except for the requirement to undertake Comparative Monitoring, failure to substantially comply with the LDAR audit requirements in Paragraph 22	\$ 10,000 per audit										
38.j. Failure to substantially comply with the Comparative Monitoring requirements of Paragraph 23	\$ 5,000 per audit										
38.k. Failure to timely submit a Corrective Action Plan that substantially conforms to the requirements of Paragraph 25	<table> <tr> <th><u>Period of non-compliance</u></th><th><u>Penalty per day per violation</u></th></tr> <tr> <td>1 - 15 days</td><td>\$ 50</td></tr> <tr> <td>16 - 30 days</td><td>\$ 125</td></tr> <tr> <td>31 days or more</td><td>\$ 250</td></tr> <tr> <td colspan="2">Not to exceed \$20,000 per audit</td></tr> </table>	<u>Period of non-compliance</u>	<u>Penalty per day per violation</u>	1 - 15 days	\$ 50	16 - 30 days	\$ 125	31 days or more	\$ 250	Not to exceed \$20,000 per audit	
<u>Period of non-compliance</u>	<u>Penalty per day per violation</u>										
1 - 15 days	\$ 50										
16 - 30 days	\$ 125										
31 days or more	\$ 250										
Not to exceed \$20,000 per audit											

38.l. Each failure to implement a corrective action within 90 days after the LDAR Audit Completion Date or pursuant to the schedule that Dover must propose pursuant to Subparagraph 25.b if the corrective action cannot be completed in 90 days	<table> <tr> <th><u>Period of non-compliance</u></th><th><u>Penalty per day per violation</u></th></tr> <tr> <td>1 - 15 days</td><td>\$ 250</td></tr> <tr> <td>16 - 30 days</td><td>\$ 375</td></tr> <tr> <td>31 days or more</td><td>\$ 500</td></tr> <tr> <td colspan="2">Not to exceed \$20,000 per audit</td></tr> </table>	<u>Period of non-compliance</u>	<u>Penalty per day per violation</u>	1 - 15 days	\$ 250	16 - 30 days	\$ 375	31 days or more	\$ 500	Not to exceed \$20,000 per audit	
<u>Period of non-compliance</u>	<u>Penalty per day per violation</u>										
1 - 15 days	\$ 250										
16 - 30 days	\$ 375										
31 days or more	\$ 500										
Not to exceed \$20,000 per audit											
38.m. Failure to timely submit a Certification of Compliance that substantially conforms to the requirements of Paragraph 26	<table> <tr> <th><u>Period of non-compliance</u></th><th><u>Penalty per day per violation</u></th></tr> <tr> <td>1 - 15 days</td><td>\$ 50</td></tr> <tr> <td>16 - 30 days</td><td>\$ 125</td></tr> <tr> <td>31 days or more</td><td>\$ 250</td></tr> <tr> <td colspan="2">Not to exceed \$15,000</td></tr> </table>	<u>Period of non-compliance</u>	<u>Penalty per day per violation</u>	1 - 15 days	\$ 50	16 - 30 days	\$ 125	31 days or more	\$ 250	Not to exceed \$15,000	
<u>Period of non-compliance</u>	<u>Penalty per day per violation</u>										
1 - 15 days	\$ 50										
16 - 30 days	\$ 125										
31 days or more	\$ 250										
Not to exceed \$15,000											
38.n. Failure to submit a Title V Permit application in accordance with the requirements of Paragraph 27	<table> <tr> <th><u>Period of non-compliance</u></th><th><u>Penalty per day per violation</u></th></tr> <tr> <td>1 - 15 days</td><td>\$ 250</td></tr> <tr> <td>16 - 30 days</td><td>\$ 375</td></tr> <tr> <td>31 days or more</td><td>\$ 500</td></tr> </table>	<u>Period of non-compliance</u>	<u>Penalty per day per violation</u>	1 - 15 days	\$ 250	16 - 30 days	\$ 375	31 days or more	\$ 500		
<u>Period of non-compliance</u>	<u>Penalty per day per violation</u>										
1 - 15 days	\$ 250										
16 - 30 days	\$ 375										
31 days or more	\$ 500										
38.o. Pursuant to Paragraph 28, each day of delay, beyond 90 days, that Dover is responsible for with respect to the issuance of a Title V Permit for the Facility	\$ 250 per day										
38.p. Each failure to comply with the notification requirements, including the requirements relating to timing, of Paragraph 29	\$ 50 per day per violation										
38.q. Each failure to comply with any recordkeeping, submission, or reporting requirement in Section V not specifically identified above in this Table 1.	<table> <tr> <th><u>Period of non-compliance</u></th><th><u>Penalty per day per violation</u></th></tr> <tr> <td>1 - 15 days</td><td>\$ 50</td></tr> <tr> <td>16 - 30 days</td><td>\$ 125</td></tr> <tr> <td>31 days or more</td><td>\$ 250</td></tr> </table>	<u>Period of non-compliance</u>	<u>Penalty per day per violation</u>	1 - 15 days	\$ 50	16 - 30 days	\$ 125	31 days or more	\$ 250		
<u>Period of non-compliance</u>	<u>Penalty per day per violation</u>										
1 - 15 days	\$ 50										
16 - 30 days	\$ 125										
31 days or more	\$ 250										

39. Waiver of Payment. The United States may, in its unreviewable discretion, reduce or waive payment of stipulated penalties otherwise due to it under this Consent Decree.

40. Demand for Stipulated Penalties. A written demand for the payment of stipulated penalties will identify the particular violation(s) to which the stipulated penalty relates; the stipulated penalty amount (as can be best estimated) that the United States is demanding for each



violation; the calculation method underlying the demand; and the grounds upon which the demand is based.

41. Stipulated Penalties' Accrual. Stipulated penalties will begin to accrue on the day after performance is due or the day a violation occurs, whichever is applicable, and will continue to accrue until performance is satisfactorily completed or the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

42. Manner of Payment of Stipulated Penalties. Stipulated penalties owing to the United States of under \$10,000 will be paid by check and made payable to "U.S. Department of Justice," referencing DOJ Number 90-5-2-1-09309 and USAO File Number 2008V00777, and delivered to the U.S. Attorney's Office in the Northern District of Ohio, Attn. FLU Unit, Carl B. Stokes United States Court House, 801 West Superior Ave., Suite 400, Cleveland, OH 44113-1852. Stipulated penalties owing to the United States of \$10,000 or more will be paid in the manner set forth in Section IV (Civil Penalty) of this Consent Decree. All transmittal correspondence shall state that the payment is for stipulated penalties, shall identify the violations to which the payment relates, and shall include the same identifying information required by Paragraph 10.

43. Timing of Payment of Stipulated Penalties. Dover shall pay stipulated penalties within 60 days of receiving a written demand for payment unless Dover invokes dispute resolution pursuant to Paragraph 44 and Section IX.

44. Disputes over Stipulated Penalties. By no later than 60 days after receiving a demand for stipulated penalties, Dover may dispute liability for any or all stipulated penalties demanded by invoking the dispute resolution procedures of Section IX. If Dover fails to pay

stipulated penalties when due and does not prevail in dispute resolution, Dover shall be liable for interest at the rate specified in 28 U.S.C. § 1961, accruing as of the date payment became due.

45. Subject to the provisions of Section XI of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for a violation of this Consent Decree or applicable law. In addition to injunctive relief or stipulated penalties, the United States may elect to seek mitigating emissions reductions equal to or greater than the excess amounts emitted if the violations result in excess emissions. Dover reserves the right to challenge the United States' exercise of this option. Where a violation of this Consent Decree is also a violation of the CAA or its implementing regulations, Dover shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

#### **VIII. FORCE MAJEURE**

46. "Force Majeure," for purposes of this Consent Decree, is defined as any event beyond the control of Dover, its contractors, or any entity controlled by Dover that delays the performance of any obligation under this Consent Decree despite Dover's best efforts to fulfill the obligation. The requirement that Dover exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event as it is occurring and after it has occurred to prevent or minimize any resulting delay.

47. "Force Majeure" does not include Dover's financial inability to perform any obligation under this Consent Decree. Unanticipated or increased costs or expenses associated with the performance of Dover's obligations under this Consent Decree shall not constitute

circumstances beyond Dover's control nor serve as the basis for an extension of time under this Section VIII.

48. If any event occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Consent Decree, Dover shall notify EPA: (i) orally or by electronic or facsimile transmission as soon as possible, but not later than 120 hours after the time Dover first learns of the event or should have learned of the event by the exercise of due diligence; and (ii) in writing not later than seven days after the time Dover first learned or should have learned by the exercise of due diligence that the event might cause a delay. In the written notice, Dover shall specifically reference this Paragraph 48 of the Consent Decree and shall provide, to the extent such information is available at the time, an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Dover's rationale for attributing such delay to a Force Majeure event; and a statement as to whether, in the opinion of Dover, such event may cause or contribute to an endangerment to public health, welfare or the environment. Dover shall be deemed to know of any circumstance of which Dover, any entity controlled by Dover, or Dover's contractors knew or should have known. The written notice required by this Paragraph shall be effective upon the mailing of the same by overnight mail or by certified mail, return receipt requested, to EPA in the manner set forth in Section XIII (Notices).

49. Failure by Dover to materially comply with the notice requirements specified in Paragraph 48 shall preclude Dover from asserting any claim of Force Majeure with respect to the

particular event involved, unless the United States, in its unreviewable discretion, permits Dover to assert a Force Majeure claim with respect to the particular event.

50. The United States shall respond in writing to Dover regarding Dover's claim of Force Majeure within 45 days of receipt of the notice required under Paragraph 48. After this initial response, the parties may confer.

51. If EPA initially or ultimately agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. However, Dover may request that the time be extended for performance of any other obligation that is affected by the Force Majeure event. EPA will notify Dover in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event

52. If EPA does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, or if the parties fail to agree on the length of the delay attributable to the Force Majeure event, EPA so will notify Dover in writing of its final decision.

53. If Dover elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 45 days after receipt of EPA's notice under Paragraph 50 (if the parties do not confer after that notice), or under Paragraph 52 (if the parties confer after the Paragraph 50 notice). In any such proceeding, Dover shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought

was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Dover materially complied with the requirements of Paragraphs 46 and 48. If Dover carries this burden, the delay at issue shall be deemed not to be a violation by Dover of the affected obligation of this Consent Decree identified to EPA and the Court.

## **IX. DISPUTE RESOLUTION**

54. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

55. Informal Dispute Resolution. The first stage of dispute resolution shall consist of informal negotiations. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 60 days after the Notice of Dispute, unless that period is modified by written agreement. If the Parties cannot resolve the dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless within 45 days after the conclusion of the informal negotiation period, Dover invokes formal dispute resolution procedures set forth below.

56. Formal Dispute Resolution. Dover shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Dover's position and any supporting documentation relied upon by Dover.

57. The United States shall serve its Statement of Position within 45 days of receipt of Dover's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Dover unless Dover files a motion for judicial review of the dispute in accordance with the following Paragraph.

58. Dover may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 60 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Dover's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

59. The United States shall respond to Dover's motion within the time period allowed by the Local Rules of this Court for responses to dispositive motions. Dover may file a reply memorandum, to the extent permitted by the Local Rules.

60. In a formal dispute resolution proceeding under this Section, Dover shall bear the burden of demonstrating that its position complies with this Consent Decree and the CAA and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and Dover reserves the right to argue to the contrary.

61. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Dover under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute. If Dover does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

#### **X. INFORMATION COLLECTION AND RETENTION**

62. The United States and its representatives and employees shall have the right of entry into the Facility, at all reasonable times, upon presentation of credentials and any other documentation required by law, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain documentary evidence, including photographs and similar data, relevant to compliance with the terms of this Consent Decree; and
- d. assess Dover's compliance with this Consent Decree.

63. Until one year after termination of this Consent Decree, Dover shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information, regardless of storage medium (*e.g.*, paper or electronic) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that directly relate to Dover's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention

period, the United States may request copies of any documents, records, or other information required to be maintained under this Paragraph.

64. Except for emissions data, Dover may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Dover seeks to protect as CBI, Dover shall follow the procedures set forth in 40 C.F.R. Part 2.

65. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Dover to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

#### **XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

66. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action from the date those claims accrued through the Date of Lodging.

67. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 66. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CAA or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 66. The United States further reserves all legal and equitable remedies to address any situation that may present an imminent and substantial endangerment to the public health or welfare or the environment



arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise.

68. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, Dover shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 66 of this Section.

69. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Dover is responsible for achieving and maintaining compliance with all applicable federal, state, and local laws, regulations, and permits and Dover's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Dover's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, or with any other provisions of federal, state, or local laws, regulations, or permits.

70. This Consent Decree does not limit or affect the rights of Dover or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Dover, except as otherwise provided by law.

71. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party that is not a Party to this Consent Decree.

## **XII. COSTS**

72. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) against Dover incurred in any action necessary to enforce this Consent Decree or to collect any portion of the civil penalty or any stipulated penalties due but not paid by Dover.

## **XIII. NOTICES**

73. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed to the persons set forth below. Submission of hard copies is required and shall be sufficient to comply with the notice requirements of this Consent Decree. The email addresses listed below are to permit the submission of courtesy copies.

### **Notice or submission to the United States:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, DC 20044-7611  
Re: DOJ No. 90-5-2-1-09309

### **Notice or submission to EPA:**

Air and Radiation Division  
EPA Region 5  
77 W. Jackson Blvd. (AE-17J)  
Chicago, IL 60604  
Attn: Compliance Tracker

and

Kathleen Schnieders  
Office of Regional Counsel  
EPA Region 5  
77 West Jackson Blvd. (C-14J)  
Chicago, IL 60604

For courtesy purposes only, electronic copies to:

[schnieders.kathleen@epa.gov](mailto:schnieders.kathleen@epa.gov)  
[loukeris.constantinos@epa.gov](mailto:loukeris.constantinos@epa.gov)  
[patel.shilpa@epa.gov](mailto:patel.shilpa@epa.gov)

Notice or submission to Dover:

Melissa Clark-Dross  
Corporate EH&S Regulatory Manager  
3676 Davis Road, NW  
Dover, OH 44622-0040

and

Robert J. Basil, Esq.  
Collier & Basil, P.C.  
1270 Broadway, Suite 305  
New York, New York, 10001

and

Steven J. Ricca, Esq,  
Jaeckle Fleischmann & Mugel, LLP  
Avant Building – Suite 900  
200 Delaware Ave.  
Buffalo, NY 14202-2107

For courtesy purposes only, electronic copies to:

[mclark@doverchem.com](mailto:mclark@doverchem.com)  
[robertjbasil@collierbasil.com](mailto:robertjbasil@collierbasil.com)  
[sricca@jaeckle.com](mailto:sricca@jaeckle.com)

Any Party may, by written notice to the other Party, change its designated notice recipient(s) or notice address(es) provided above. Notices submitted pursuant to this Section shall be deemed

submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### **XIV. EFFECTIVE DATE**

74. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket. Dover hereby agrees to perform the requirements of Paragraphs 14 – 16, 20, and 27 – 29 if these requirements come due before the Effective Date of this Consent Decree; provided however, that if the United States withdraws or withholds its consent to this Consent Decree before entry, or if the Court declines to enter this Consent Decree, Dover may withdraw its consent to HON and MON applicability for the units identified in Paragraphs 14 and 15, respectively; may terminate performance of any LDAR audit or CAP then being performed, and may withdraw its application for a Title V Permit. All obligations shall terminate in the event the United States withdraws or withholds its consent or the Court declines to enter this Decree.

#### **XV. RETENTION OF JURISDICTION**

75. The Court shall retain jurisdiction over this case until termination of this Consent Decree for the purposes of resolving disputes arising under this Decree, entering orders modifying this Decree, or effectuating or enforcing compliance with the terms of this Decree.

#### **XVI. MODIFICATION**

76. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by the United States and Dover. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

77. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX of this Decree (Dispute Resolution); provided, however, that instead of the burden of proof as provided by Paragraph 60, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

#### **XVII. TERMINATION**

78. By no sooner than 120 days after the third LDAR Audit Completion Date, Dover may send the United States a Request for Termination of this Consent Decree. In the Request for Termination, Dover must demonstrate that it has maintained satisfactory compliance with this Consent Decree for the two year period immediately preceding the Request for Termination and that it has completed all corrective actions, if any, required by the third LDAR Audit. In no event may this Consent Decree be terminated if the civil penalty and/or any outstanding stipulated penalties have not been paid. The Request for Termination shall include all necessary supporting documentation.

79. Following receipt by the United States of Dover's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Dover satisfactorily has complied with the requirements for termination. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

80. If the United States does not agree that the Decree may be terminated, Dover may invoke dispute resolution under Section X of this Decree. However, Dover shall not invoke dispute resolution for any dispute regarding termination until 60 days after sending its Request for Termination.

**XVIII. PUBLIC PARTICIPATION**

81. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Dover consents to entry of this Consent Decree without further notice.

**XIX. SIGNATORIES/SERVICE**

82. The undersigned representatives of Dover and the Acting Section Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the Department of Justice (or his or her designee) each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

83. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

84. Dover agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree unless the United States has notified Dover in writing that it no longer supports entry of the Decree. The parties agree that Dover need not file an answer to the Complaint in this action unless and until thirty days after: (i) the United States has notified Dover in writing that the United States no longer supports entry of the Consent Decree; or (ii) the Court expressly declines to enter the Consent Decree.

85. Dover agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set

forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

**XX. INTEGRATION**

86. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, except for any plans or other deliverables that are submitted and approved pursuant to this Decree, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, and no such extrinsic document or statement of any kind shall be used in construing the terms of this Decree.

**XXI. FINAL JUDGMENT**

87. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court in this action as to the United States and Dover. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF OHIO

We hereby consent to entry of the Consent Decree in the matter of United States v. Dover Chemical Corporation, subject to public notice and comment.

FOR THE UNITED STATES OF AMERICA

s/ W. Benjamin Fisherow  
W. BENJAMIN FISHEROW  
Acting Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice

s/ Annette M. Lang  
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We hereby consent to entry of the Consent Decree in the matter of United States v. Dover Chemical Corporation, subject to public notice and comment.

FOR THE UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

s/ Susan Hedman  
SUSAN HEDMAN  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5  
Chicago, IL

s/ Robert A. Kaplan  
ROBERT A. KAPLAN  
Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
Chicago, IL

We hereby consent to entry of the Consent Decree in the matter of United States v. Dover Chemical Corporation.

FOR DOVER CHEMICAL CORPORATION

s/ Dwain Colvin  
DWAIN COLVIN  
President  
Dover Chemical Corporation  
3676 Davis Road NW  
Dover, OH 44622